CASE SUMMARY

Case 2: Inadequate disclosure to Home Ownership Scheme purchasers on slope maintenance responsibility

The Complaint

The Owners' Corporation ("OC") of a Home Ownership Scheme ("HOS") estate lodged a complaint with this Office against the Hong Kong Housing Authority ("HA"), alleging that HA had included in the Deed of Mutual Covenant ("DMC") the maintenance responsibility for an adjacent slope on temporary lease from the Lands Department ("Lands D") for works purpose. The OC considered HA to be shifting the maintenance responsibility to owners of the estate, without having informed purchasers of such responsibility during the sale of flats.

Sequence of Events

2. The HOS estate was developed in two phases.

3. In a certain year, HA put Phase I of the estate on sale. A year or so later, Lands D granted HA temporary lease of a slope adjacent to the site as a works area, on condition that the lessee shall be responsible for managing and maintaining that slope until further notice. Lands D also stated that it would resume the slope only when necessary.

4. About five months later, Phase I was completed. The first title deed was signed and the DMC came into effect. The DMC stipulated that the responsibility for managing and maintaining all slopes in the estate shall be collectively borne by the owners of the estate.

5. Next year, Phase II was put on sale. Four months later, construction works were completed and Lands D was asked to resume the slope. However, the Department refused and replied that should it decide to resume the slope in future, HA would be notified in writing.

6. Phase II was completed the following year. 13 months later, the OC was formed and took over the management of the estate.

7. Two years later, Lands D wrote to the owners of the estate demanding that it clear the refuse on the slope. The OC claimed that the owners had no knowledge of such responsibility.

Comments from HA

<u>Owners' slope maintenance responsibility</u>

8. At first, HA assumed that the management and maintenance responsibility for the slope would be temporary and the slope would be returned to Lands D eventually. HA included the provision in the DMC to ensure that such responsibility would be collectively borne by the owners after completion of the estate until resumption of the slope by Lands D.

Disclosure to Purchasers

9. In the sales brochures of both Phases I and II, purchasers were reminded to refer to the land lease and the DMC and where necessary, seek professional advice. HA claimed that the sales brochures had followed the guidelines in *Description of Flats on Sale – Local Uncompleted Residential Properties* issued by the Law Reform Commission of Hong Kong ("the Commission").

10. Purchasers had also been shown an outline of the DMC when they chose their flats at the Home Ownership Centre. It indicated that owners would be responsible for maintaining "all slopes" under the Government lease. Furthermore, purchasers had signed a declaration that they understood their responsibility for managing and maintaining slopes as specified in the land lease and DMC. HA understands from the solicitors representing both parties that they had explained the salient points of the DMC to purchasers.

11. When Phase I was put on sale, the issue of slope maintenance responsibility had not surfaced as HA had not yet been granted temporary lease for it by Lands D. When Phase II was put on sale, HA did not clearly set out such responsibility in the Phase II sales brochure as it believed at that time that the slope would be returned to Lands D after completion of works. Furthermore, there was a provision in the DMC that the owners were to be responsible for managing and maintaining all slopes in the estate.

Our Observations and Comments

12. While purchasers have the obligation to understand the terms of the land lease and DMC before buying a property and to assume the responsibilities under those terms after purchase, in reality they seldom have ample opportunity or sufficient knowledge to understand all the details in those documents. They would generally rely on the developer to provide key information and the solicitors to point out and explain their responsibilities.

Disclosure to purchasers of Phase I

13. It can be seen from paragraph 11 above that when Phase I was put on sale, the issue of slope maintenance responsibility had not surfaced and the DMC of the estate was not operative. Since any information about the maintenance of that slope was to be included in the DMC, there was no way

Phase I purchasers could know about this added responsibility.

14. When later granted temporary lease of the slope, HA decided to pass the slope maintenance responsibility to the future owners of the estate. In this connection, HA ought to have notified purchasers of its decision as soon as possible, so that they could reconsider whether or not to proceed with the purchase.

15. Whilst the solicitors should have drawn purchasers' attention to the added responsibility before the completion of transaction, the information provided by HA does not substantiate that they had done so.

16. As a matter of fact, HA had only focused on the technicalities (stating the slope maintenance responsibility in the DMC) and was obviously deficient in keeping purchasers clearly informed.

<u>Disclosure to purchasers of Phase II</u>

17. When Phase II was put on sale, the DMC was already in effect and owners' responsibility for maintaining the slope established. Nonetheless, the information given by HA to purchasers as mentioned in paragraphs 9 and 10 above had not spelt out this responsibility clearly. An even more serious issue is that although the sales brochure contained a plan showing some slopes over which owners would have maintenance responsibility, they did not include the slope in question.

18. This Office finds it improper of HA not to have made full and timely disclosure of all information to purchasers with regard to this significant issue affecting their interests.

19. HA has argued that it had followed the guidelines issued by the Commission. However, the Commission actually recommended that "if there is actual or potential responsibility for maintaining private slopes, there should be clear notifications to purchasers in the sales brochure of that responsibility".

20. Evidently, HA did not comply with the guidelines as claimed.

Conclusion

21. As a public organisation, HA ought to be particularly aware of the importance of integrity and transparency of its actions. It should have given clear and accurate information to purchasers about any special responsibility to be borne by them, so that they could make informed decisions on purchase. The complaint is, therefore, **substantiated**.

22. Against this background, we consider that in the special circumstances of the case and the possibility of the slope being eventually

resumed by Lands D, a solution to the problem would be for HA to directly manage and maintain the slope until resumption by Lands D.

Recommendations

23. The Ombudsman urges HA to:

(a) consider the solution proposed above and negotiate with OC for early implementation; and

(b) review the existing practice of disclosing important information. Besides clearly informing purchasers of special responsibilities like this in sales brochures, HA should promptly and clearly remind purchasers of any additional terms so as to safeguard their interests.

Office of The Ombudsman
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